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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 258

LUCKENBACH STEAMSHIP COMPANY, INC., AND THE
UNITED STATES OF AMERICA

vs.

NORWEGIAN BARQUE "THEKLA," HER TACKLE, ETC.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SECOND CIRCUIT

INDEX

Original. Print.

Certificate from the United States Circuit Court of Appeals for the	
Second Circuit	1 1
Statement of facts	1 1
Questions certified	6 4
Judge's certificates	7 4
Clerk's certificate	8 4

1920-1921 - 1921-1922 - 1922-1923 - 1923-1924

1924-1925 - 1925-1926 - 1926-1927 - 1927-1928

1928-1929 - 1929-1930 - 1930-1931 - 1931-1932

1932-1933 - 1933-1934 - 1934-1935 - 1935-1936

1936-1937 - 1937-1938 - 1938-1939 - 1939-1940

1940-1941 - 1941-1942 - 1942-1943 - 1943-1944

1944-1945 - 1945-1946 - 1946-1947 - 1947-1948

1948-1949 - 1949-1950 - 1950-1951 - 1951-1952

1952-1953 - 1953-1954 - 1954-1955 - 1955-1956

1956-1957 - 1957-1958 - 1958-1959 - 1959-1960

1960-1961 - 1961-1962 - 1962-1963 - 1963-1964

1964-1965 - 1965-1966 - 1966-1967 - 1967-1968

1968-1969 - 1969-1970 - 1970-1971 - 1971-1972

1972-1973 - 1973-1974 - 1974-1975 - 1975-1976

1976-1977 - 1977-1978 - 1978-1979 - 1979-1980

1980-1981 - 1981-1982 - 1982-1983 - 1983-1984

1984-1985 - 1985-1986 - 1986-1987 - 1987-1988

1988-1989 - 1989-1990 - 1990-1991 - 1991-1992

1992-1993 - 1993-1994 - 1994-1995 - 1995-1996

1996-1997 - 1997-1998 - 1998-1999 - 1999-2000

2000-2001 - 2001-2002 - 2002-2003 - 2003-2004

2004-2005 - 2005-2006 - 2006-2007 - 2007-2008

2008-2009 - 2009-2010 - 2010-2011 - 2011-2012

2012-2013 - 2013-2014 - 2014-2015 - 2015-2016

2016-2017 - 2017-2018 - 2018-2019 - 2019-2020

2020-2021 - 2021-2022 - 2022-2023 - 2023-2024

2024-2025 - 2025-2026 - 2026-2027 - 2027-2028

2028-2029 - 2029-2030 - 2030-2031 - 2031-2032

1 United States Circuit Court of Appeals for the Second Circuit.

LUCKENBACH STEAMSHIP COMPANY, INC.
and The United States of America
 v.
NORWEGIAN BARQUE "THEKLA," HER
tackle, &c.

Questions certified under Judicial Code, Sec. 239, with statement of facts revealed by the apostles

This cause came to this court by appeal from a final decree in admiralty entered in the District Court for the Southern District of New York.

On May 13, 1918, the libel was filed *in rem* by Luckenbach S. S. Co. only, "on behalf of itself and the other owners" of S. S. "F. J. Luckenbach," to recover damages for injuries received by that steamer on February 13, 1918, by reason of collision on the high seas with the barque "Thekla."

The owners of the barque duly claimed their vessel, gave a stipulation for value, answered the libel, and filed a cross libel *in rem* against the steamer.

Shortly before filing this answer, said claimants of the 2 barque moved under the 53d rule in admiralty, for a stay of proceedings on the part of libellant, until such time as Luckenbach Steamship Company, Inc., should "give security in the usual form, to respond in damages as claimed in the cross-libel."

This motion was granted on October 7, 1918, the order declaring that "all proceedings on the original libel shall be stayed until such security shall be given." The original and cross libel were also consolidated, and progressed as one cause.

Thereafter and on May 9, 1919, the United States moved as follows,

"SIRS: Please take notice that a petition of which the enclosed is a copy will be presented and a motion made for an order making the United States of America a party libellant in the above entitled cause at a stated term for the hearing of motions of the United States District Court held in and for the Southern District of New York at the United States courts and post office building, Borough of Manhattan, city of New York, on May 16, 1919, at the opening of court on that date or as soon thereafter as counsel can be heard.

"Dated, New York, May 9, 1919.

"Yours, etc.,

"FRANCIS G. CAFFEY,

"United States Attorney for the
Southern District of New York.

"Proctor for the United States of America."

This notice was addressed to the proctors for Luckenbach S. S. Co. and the "Thekla." The motion was granted, and by order dated

2 LUCKENBACH S. S. CO. VS. NORWEGIAN BARQUE "THEKLA"

June 4th, 1919, the United States became a "party libellant," but never filed any further libel or pleading in the nature thereof; it stood on the libel of Luckenbach S. S. Co.

3 The United States filed a claim, in this suit and to the steamship in the following words:

"And now the United States of America, owner *pro hac vice* of the S. S. 'F. J. Luckenbach,' intervening for the interest of itself for the said cause of action, specially appearing and without submitting itself to the jurisdiction of this Honorable Court, makes claim to the said steamship, 'F. J. Luckenbach,' as the same is proceeded against by the libellant herein, and the said United States of America avers that it was in possession of said S. S. 'F. J. Luckenbach' at the time of the filing of the libel in the above entitled cause, and that at that time it was the true and bona fide owner of the said steamship and that no other person was at that time the owner thereof.

"Wherefore, the United States of America prays to defend accordingly.

"FRANCIS G. CAFFEY,

"United States Attorney, Southern District of New York,
Specially Appearing as Proctor for Claimant,
the United States of America."

Thereupon, and to lift the stay of proceedings aforesaid, there was filed in the cause a stipulation for value, in the following words:

"Whereas, a libel was filed on the 25th day of September, 1918, by Jens Samuelsen and B. Olsen, owners of the bark 'Thekla,' for the sum of \$130,000.00 against the steamship 'F. J. Luckenbach,' her engines, etc., for the reasons and causes in said libel mentioned; and

"Whereas, the ~~said steamship 'F. J. Luckenbach'~~ was owned by G. Caffey, United States Attorney for the Southern District of New York, as chartered owner by requisition, of said steamship 'F. J. Luckenbach,' has made claim for said steamship in said proceeding, and the value thereof has been fixed for the purpose of bonding at the sum of \$130,000.00, and

"Whereas, the said steamship 'F. J. Luckenbach' was owned by the Luckenbach Company, Incorporated, and was under requisition charter to, and in the possession of the United States, claimant,
4 at the time of the collision upon which said libel is grounded, and for which the liability, if any, is that of the United States, acting through the United States Shipping Board Emergency Fleet Corporation, the operator of said steamship; and

"Whereas, the United States Shipping Board Emergency Fleet Corporation, as stipulator, hereby consents and agrees that in case of default or contumacy on the part of said claimant, execution will issue against its goods, chattels and lands in the sum of \$130,000.00;

"Now, therefore, the condition of this stipulation is such that if claimant herein, and the United States Shipping Board Emergency Fleet Corporation, the stipulator undersigned, shall abide by all orders of the court, interlocutory and final, and pay the amount

awarded by the final decree of such court, or any appellate court, if an appeal intervene, then this stipulation shall be void, otherwise to remain in full force and virtue.

"UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
"By B. K. OGDEN,
"Acting Director of Insurance, Stipulator.

"(Seal of the United States Shipping Board Emergency Fleet Corporation, of the District of Columbia, 1917).

"Attest:

"JAMES S. CONVERSE,
"Ass't Secretary.

"Filed."

The United States did not separately answer the cross libel; but on October 3d, 1919, there was filed the following pleading thereto:

"The exception and answer of Luckenbach Steamship Company, Inc., on behalf of itself and the other owners of the steel screw steamship 'G. J. Luckenbach,' to the cross libel of Jens Samuelsen and B. Olsen, owners of the Norwegian bark 'Thekla,' against the steamship 'F. J. Luckenbach,' and against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, alleges as follows:

5 Luckenbach Steamship Company, Inc., excepts to the said cross libel of Jens Samuelsen and B. Olsen filed herein, on the ground that at the time of the collision between the bark 'Thekla' and the steamship 'F. J. Luckenbach' the said steamship was, and still is, in the possession and under the control and navigation of the United States Government, through the United States Shipping Board, under charter party (bare boat form), and that said steamship was not, and is not, therefore, subject to attachment, and that the matters set forth in the cross libel are not within the jurisdiction of this honorable court.

"Without waiving the said exceptions, but insisting thereon, the said Luckenbach Steamship Company, Inc., answering the said cross libel herein as follows:"

(then follows the Luckenbach's story of the collision, and the pleading concludes with a prayer by the Luckenbach Steamship Co., Inc., that the cross libel be dismissed with costs.)

Upon the trial it appeared that the F. J. Luckenbach although owned by the original libellant, was, at and before the time of collision, in the possession of the United States, manned by a crew selected by the United States Shipping Board, and employed by the War Department in carrying Army stores to France. The Government possession was as owner *pro hac vice*, and resulted from a bare boat charter, made by Luckenbach S. S. Co. to the United States. Said charter contained, among other clauses, the following:

"Second. The United States, at its sole expense, shall man, operate, victual and supply the vessel.

"Third. The United States shall pay all port charges, pilotages, and all other costs and expenses incident to the use and operation of the vessel.

"Fourth. The United States shall assume war, marine, and all other risks of whatsoever nature or kind, including all risk of liability or damage occasioned to other vessels, persons or property."

6 Trial was had, and it appeared that the collision between "Luckenbach" and "Thekla" resulted solely from the negligence of those in charge of the Luckenbach's navigation; and this finding we have affirmed. The court below further held that the "Thekla's" damages amounted to \$120,619.71, together with interest and costs; for which sums, amounting to \$154,622.41, said court entered decree thus:

"Ordered, adjudged and decreed that Jens Samuelsen and B. Olsen, as owners of the bark "Thekla" recover of and from the United States of America and the United States Shipping Board Emergency Fleet Corporation, claimant and stipulators, the damages sustained by them in consequence of the said collision."

From this decree Luckenbach Steamship Co. did not appeal, but the suit having been severed the United States appealed to this court; contesting the finding below that fault for the collision lay solely with the Luckenbach, and further assigning for error

"That the court (below) granted affirmative relief against the United States under the cross-libel."

QUESTIONS CERTIFIED, AS TO WHICH THIS COURT DESIRES THE INSTRUCTION OF THE SUPREME COURT OF THE UNITED STATES

1. Was the district court empowered by law to render the decree entered?

If the answer to the first question is in the negative—

2. Must United States Shipping Board Emergency Fleet Corporation as stipulator respond for the damages of the "Thekla" as proven herein?

Dated January 9, 1924.

CHAS. M. HOUGH,
MARTIN T. MANTON,
JULIUS M. MAYER,
U. S. Circuit Judges.

8 In the United States Circuit Court of Appeals for the Second Circuit

Clerk's certificate

UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing statement of facts and certificate in the case of Luckenbach

Steamship Company, and the United States against the Norwegian Bark "Thekla," her tackle, etc., was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said court at the city of New York, on the 10th day of January, 1924.

[SEAL]

Wm. Parkin,

*Clerk of the United States Circuit Court of Appeals,
for the Second Circuit.*

(Indorsed:) United States Circuit Court of Appeals, Second Circuit. Luckenbach S. S. Co., Inc. and The United States of America vs. Norwegian barque "Thekla," &c. Questions certified. U. S. Circuit Court of Appeals, Second Circuit. Filed Jan. 9, 1924. William Parkin, clerk.

(Indorsed on cover:) File No. 30055. U. S. Circuit Court of Appeals, Second Circuit. Term No. 258. Luckenbach Steamship Company, Inc., and The United States of America, vs. Norwegian barque "Thekla," her tackle, etc. (Certificate.) Filed January 14th, 1924. File No. 30055.

